STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JD, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SARAH PERRY,

Respondent-Appellant,

and

RAYMOND DODSON,

Respondent.

UNPUBLISHED
July 20, 2001

No. 226438
Genesee Circuit Court
Family Division
LC No. 98-110820-NA

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FAMILY INDEPENDENCE AGENCY,

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v

RAYMOND DODSON,

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Genesee Circuit Court
Family Division
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Before: White, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

In these consolidated cases, respondents Sarah Perry and Raymond Dodson appeal as of right from a family court order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

To terminate parental rights, the family court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000).

This Court reviews a family court's decision to terminate parental rights for clear error. MCR 5.974(I); *In re Cornet*, 422 Mich 274, 277; 373 NW2d 536 (1985). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with the definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). This Court gives regard to the special ability of the trial court to judge the credibility of the witnesses before it. MCR 2.613(C); *In re Miller, supra*, at 337.

The family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller, supra*, at 337. The minor child was originally placed under the court's jurisdiction for failure to thrive and because respondents' living conditions were deplorable. Respondents' living conditions did not significantly change after more than a year. Respondents continued to maintain their trailer home in an unsanitary and unsafe condition in which animals ran rampant and defecated on the trash-ridden floor. Moreover, evidence showed that respondents neglected to repair exposed, live wires and broken or missing doors for a period of months. Though, after more than a year, the conditions in the trailer home appeared to improve to some extent, witnesses testified that they were still below acceptable standards and that the home remained unclean and unsafe. Respondents also failed to eliminate potential risks to the minor child by continuing to allow numerous animals to live in the trailer, despite a prior injury to the child. Also, respondents allowed guests with histories of erratic or criminal behavior to stay with them in the trailer.

Moreover, though respondents attended Life Skills classes, they were unable to display the skills necessary to care for the child. Perry failed to gain employment as required under the agreement and her psychological evaluation indicated a poor prognosis for taking care of the child and that she had a poor understanding of parenting. Dodson failed to attend counseling as required under the agreement, he often fell asleep during caseworker visits and he had limited interaction with the child. Finally, though both respondents admitted that they understood the importance of maintaining the trailer and protecting the child from animals, they were incapable of demonstrating that they could do either.

The trial court did not clearly err in finding that the statutory grounds for termination of Perry and Dodson's parental rights were established by clear and convincing evidence; nor did the evidence show that termination was clearly not in the child's best interests.

Respondents argue, however, that the family court erred in terminating their parental rights because they were not offered appropriate services in light of their disabilities, which constituted a violation of the Americans with Disabilities Act (ADA), 42 USC 12101 et seq.

Although respondents were learning disabled, the evidence demonstrated that they were properly accommodated as required by *In re Terry*, 240 Mich App 14; 610 NW2d 563 (2000). In *Terry*, this Court concluded that mental retardation is, in fact, a disability within the meaning of the ADA. *Id.* at 24. While the ADA is not a defense to termination proceedings,

> the ADA does require a public agency, such as the [FIA], to make reasonable accommodations for those individuals with disabilities so that all persons may receive the benefits of public programs and services. Thus, the reunification services and programs provided by the FIA must comply with the ADA. [*Id.* at 25.]

Witnesses testified that special efforts were made to ensure that Perry and Dodson understood what was required for the child's return. A Families First outreach worker who worked with special needs parents testified that she was aware of respondents' learning disabilities and, therefore, used visual aids to explain instructions and provided them with hand-outs. She also made a point to continually repeat her instructions. The social worker involved with the family also knew of respondents' special education history and tried to be more "concrete" with them. Further, respondents' Life Skills instructor recognized respondents' needs and accommodated them by reading tests aloud and by allowing respondents to make corrections on their tests. While similar services were offered to others in the program, it demonstrates that workers focused on making respondents aware of what was expected of them. The caseworker in charge also accommodated respondents' disabilities by working with them "step-by-step" and making more frequent home visits. Psychological evaluator, Dr. Harold Sommerschield testified that he believed the programs offered to respondents were appropriate.

As noted above, both respondents acknowledged that they understood what they needed to accomplish for the child to be returned to the home. Nonetheless, respondents did not demonstrate an ability to perform basic tasks to provide a clean or safe environment for themselves or for the minor child. In fact, witnesses agreed that respondents were incapable of caring for and raising the child without daily assistance and supervision. While respondents may have been entitled to certain accommodations, *In re Terry* demonstrates that they are not entitled to full-time live-in assistance.

Ultimately, the question is whether respondents would have been able to meet the child's basic needs if returned to their care. The evidence simply did not support a finding that any further programs would have helped respondents in light of the testimony that respondents would need day-to-day assistance in raising the child. Where it is shown that respondents could not or would not meet their "irreducible minimum parental responsibilities, the needs of the child must

prevail over the needs of the parent" and termination was proper. *Terry, supra*, at 28, quoting *In re AP*, 728 A2d 375 (PA Super, 1999).

Finally, Perry appears to argue that termination was not in the child's best interests because suitable relative placement was available. The record reflects, however, that relatives initially refused to take the child which necessitated her placement with a foster family. Further, Perry's father did not demonstrate an interest in taking the child until a year after the child was placed in foster care. While it is true that determination of a child's best interest may include consideration of the availability of suitable alternative homes and placement with relatives, *In re Mathers*, 371 Mich 516, 530; 124 NW2d 878 (1963), a court is not under a duty to place a child with relatives. *In re Sterling*, 162 Mich App 328, 342; 412 NW2d 284 (1987). If it is in the best interests of the child, the court may properly terminate parental rights instead of placing the child with relatives. *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999). Here, evidence clearly showed it was in the child's best interests to terminate respondents' parental rights and the court did not err in denying placement with a relative.

Affirmed.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Henry William Saad